BILL ANALYSIS

LEGISLATIVE PROPOSAL: Revenue Laws Technical, Clarifying, & Administrative Changes

Committee:	Revenue Laws Study Committee	**Date:**	March 5, 2008
Introduced by:		**Summary by:**	Trina Griffin
Version:	2007-SVz-17		Committee Counsel

SUMMARY: This legislative proposal makes several technical, clarifying, and administrative changes to the revenue laws and related statutes.

BILL ANALYSIS: This draft proposal makes the following technical, clarifying, and administrative changes:

Section	Explanation
Reform Tax Appeals Changes	
1	Section 10 of SB 242 (S.L. 2007-491) extended by one month the due date for filing a franchise tax return. Section 14 of that act made a corresponding change for corporate income tax returns. Since franchise tax and corporate income tax are reported on the same form, the effective dates must conform. However, the way the act was drafted, the one-month extension for franchise tax would occur in 2008 while the one-month extension for corporate income would take place in 2009. Section 1 of this proposal corrects the inconsistency by repealing Section 10 of SB 242, effective retroactively to January 1, 2008, and by reenacting the provision, effective January 1, 2009. With this change, the one-month extension will take effect for both taxes beginning in 2009. Section 10 of SB 242 also rewrote for clarity the subsection imposing the franchise tax. The rewrite inadvertently omitted existing language requiring a corporation to determine its tax liability based on "the books and records of the corporation at the close of the income year." Section 1 puts this language back in the statute.
2	Section 10 of SB 242 added chief financial officers to the list of corporate officers authorized to sign franchise tax returns and deleted the secretary, the assistant secretary, and the assistant treasurer. However, similar changes were not made in the corresponding corporate income tax statute. Since the franchise tax return and the corporate income tax return are on the same form, the statutes need to match. This section makes that conforming change.
3	Under the new administrative review process, the Department is required to take action on a request for a refund within six months after the request has been filed. If the Department denies the request, it must send a notice to the taxpayer, and the taxpayer has 45 days to request a review of the proposed denial. However, if the Department fails to take any action within six months, the request is considered denied, and the taxpayer has 45 days from that point to request review. The purpose of this provision is to allow the taxpayer to move forward in the administrative review process despite inaction by the Department. However, concerns have been raised that the running of this 45-day period without actual notice from the Department may create a potential trap that bars taxpayers from appealing the denial. Section 3 of the proposal gives the taxpayer two options when there is no action by the

	Department within six months after filing a claim for refund. The first option would allow the taxpayer to consider the inaction a proposed denial of the refund and to file a request for review within 45 days of the date that the inaction was considered a proposed denial. This option maintains the current law. The second option would allow the taxpayer to wait until the taxpayer receives actual notice from the Department. If the taxpayer chooses the second option, the 45-day time limit begins to run once the taxpayer receives actual notice of the proposed denial.
4	The Department must issue a final determination within nine months after the taxpayer requests a review of a proposed denial of a refund or a proposed assessment of tax. The relevant statute specifically provides that failure to timely issue a notice of final determination does not affect the validity of a proposed assessment but is silent as to the impact on a proposed denial of refund. This section would clarify that the validity of a proposed denial of refund is not affected by failure to timely issue a notice of final determination.
5	This section replaces the word "tax," which is a defined term, with the word "amount" for consistency.
Medicaid Technical Changes	
6	This section eliminates a potentially circular calculation of the amount of local sales and use tax revenue to be distributed. It does not change the amount of any tax or hold harmless payment. Currently, the law could be construed to calculate the amount of various hold harmless payments on the basis of an amount that includes a deduction for the payment that is attempted to be calculated, which is circular. The hold harmless payments are now both pegged, in part, on amounts distributed under Article 39 of Chapter 105 of the General Statutes and deducted from those amounts. Section 6 resolves this problem by making it clear that the hold harmless payments are calculated on the basis of amounts allocated for distribution before any subtraction for the hold harmless payments. References in Article 39 and Chapter 1096 of the 1967 Session Laws are replaced with a direction in G.S. 105-522 to deduct the city hold harmless payment from the total amount of local sales and use tax revenue otherwise allocated for distribution to a county. Subsection (a) adds an instruction in G.S. 105-522 to deduct the payment. Subsection (b) removes the instruction from Article 39 of Chapter 105. Subsection (c) removes the instruction from Chapter 1096.
7	This section inserts the city hold harmless amount into the calculation of the county hold harmless payment, thereby ensuring that the intent of the General Assembly is fulfilled. G.S. 105-523(a) states that each county is to benefit from the "Medicaid swap" by at least $500,000. The current calculation for determining a county's hold harmless payment, however, does not include the amount a county is required to give to its cities in order to hold them harmless from the repealed local sales taxes. Subsection (a) adds the cost of the city hold harmless to the calculation of the county hold harmless payment. Subsections (b) and (c) repeal changes to G.S. 105-523 that were to take effect in 2009, and subsection (d) reinserts those same changes into the amended G.S. 105-523 while preserving the amendments added by subsection (a).
Other Technical Changes	
8	Currently, information obtained under Article 2D (Unauthorized Substance Taxes) is confidential and may not be disclosed, unless the disclosure is made to exchange information with certain law enforcement agencies concerning a tax imposed by the

	Article. The information may also not be used in a criminal prosecution, other than for a prosecution for a violation of the Article or unless the information is independently obtained. Section 8 would allow an unauthorized substance tax officer to testify in court concerning an offense committed against that individual in the course of administering the Article. The Department has requested this change due to a specific incident involving an officer who was assaulted but was prohibited from testifying about the incident.
9	This section would repeal the North Carolina Rural Redevelopment Authority (NCRRA). The NCRRA is an inactive entity. It was created by S.L. 2000-148 but was never appointed or funded. Creation of the Authority was a recommendation of the 1999 North Carolina Rural Prosperity Task Force, which was established by Governor Jim Hunt and chaired by Erskine Bowles. As envisioned by the Task Force, the Authority would administer a revolving loan fund, the Rural Investment Fund, as well as an investment fund, the Long-Term Rural Development Fund. No money was ever appropriated to these funds. Subsection (a) repeals the statutes that create the Authority and set out its duties. Subsections (b) through (e) make conforming changes. Specifically, subsection (b) repeals the Authority's exemption from the general prohibition against a State agency competing with private enterprise. Subsection (c) deletes the Authority from the list of boards and commissions on which legislators may not serve. Subsection (d) repeals the Authority's exemption from the State Personnel Act. Subsection (e) changes a cross-reference to a definition of "regional partnership" that is now set out in a statute that is repealed in subsection (a); it replaces the cross-reference with the substance of the definition and updates the definition to reflect the accurate names of the regional economic development partnerships. The Department of Commerce has no objections to this provision.
10-12	These sections make other technical changes.

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